

LOCKE LORD LLP
MICHAEL F. PERLIS (State Bar No. 095992)
RICHARD R. JOHNSON (State Bar No. 198117)
LILIAN M. KHANJIAN (State Bar No. 259015)
DANIEL A. SOLITRO (State Bar No. 243908)
300 South Grand Avenue
Los Angeles, CA 90071
Telephone: 213-485-1500
Facsimile: 310-485-1200
Email: *MPerlis@lockelord.com*
Email: *RRJohnson@lockelord.com*
Email: *LKhanjian@lockelord.com*
Email: *DSolitro@lockelord.com*

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**CLERK U.S. BANKRUPTCY COURT
Central District of California
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CHANGES MADE BY COURT

Attorneys for Plaintiff,
Evanston Insurance Company

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:)
LAYFIELD & BARRETT, APC) Case No. 2:17-bk-19548-NB
Debtor(s).) CHAPTER 11
-----)
EVANSTON INSURANCE COMPANY,) Honorable Neil W. Bason
an Illinois corporation,) Adv. Proc. No. 2:17-ap-01412-NB
Plaintiff,) ORDER RE DISCOVERY
vs.) DISPUTE
)
LAYFIELD & BARRET, APC, PHILIP J.) Telephonic Hearing
LAYFIELD, an individual, JOSEPH) Court Call Confirmation No. 822847
BARRETT, an individual, TODD D.) DATE: JANUARY 23, 2018
WAKEFIELD, an individual, and TERRY) TIME: 1:00 P.M.
BAILEY, an individual,) PLACE: COURTROOM 1545
Defendants.) 255 East Temple Street
) Los Angeles, CA 90012
-----)
AND RELATED COUNTERCLAIM.)
1)

1 The Motion for Order Approving Settlement With Evanston Insurance
2 Company [Docket No. 184] (“Motion”) filed by Richard M. Pachulski, the duly
3 appointed chapter 11 trustee (“Trustee”) in the above-captioned bankruptcy case of
4 Layfield & Barrett, APC, pursuant to which the Trustee and Evanston Insurance
5 Company (“Evanston,” and together with the Trustee, “Parties”) sought entry of an
6 order to approve a settlement resolving the claims asserted by Evanston against the
7 Trustee in the adversary proceeding pending in this Court entitled Evanston Insurance
8 Company v. Layfield & Barrett, APC, et al., Adversary Proceeding No. 2:17-ap-
9 01412-NB, as set forth in that certain Settlement Agreement and Mutual Release
10 executed by the Parties, dated December 1, 2017, came on for hearing at the date, time
11 and place stated above. Appearances were made by counsel for Joseph Barrett and for
12 Premium Assignment Corporation II, as reflected on the record. There were no other
13 appearances, apparently because the Trustee and Evanston were not notified that this
14 Court’s posted tentative ruling would be contested, and because the tentative ruling
15 excused appearances. See Exhibit A hereto. Pursuant to the posted procedures of the
16 undersigned Bankruptcy Judge, this Court considered whether the hearing should be
17 continued to address the merits with all parties present.

18 Mr. Barrett had sought to take discovery from Evanston (including a January
19 17, 2018 deposition and documents requests) purportedly to enable him to oppose the
20 Motion, and Evanston (after having met and conferred with Mr. Barrett) submitted a
21 Motion for Protective Order and request for ~~informal~~ telephonic discovery conference
22 with this Court in accordance with its procedures. This Court ~~hosted the informal~~
23 presided at telephonic discovery conference with counsel for Evanston and Mr. Barrett
24 at 2:00 p.m. on January 12, 2018, and, after considering the written submissions and
25 oral arguments of counsel, advised that it ~~believed~~ would not compel the discovery
26 sought by Mr. Barrett ~~would not go forward~~ before the January 23, 2018 hearing on
27 the Trustee’s Motion, at which time the Court could revisit the issue as appropriate.
28

1 On January 22, 2018, this Court issued a tentative ruling granting the Trustee's
2 Motion, and ruling, with respect to the discovery dispute between Evanston and Mr.
3 Barrett, as follows:

4 The tentative ruling is that, in addition to the reasons stated in the
5 motion (dkt. 184) and the reply briefs filed by the Trustee (dkt. 207)
6 and Evanston (dkt. 206), Mr. Barrett has not established that (a) the
7 expense to the bankruptcy estate of the proposed discovery (let alone
8 any expense that Evanston could charge against any premium refund)
9 would be justified by (b) the apparently remote or perhaps non-existent
10 possibility of discovering facts that would support Mr. Barrett's legal
11 theories, nor has he established that the language of the proposed
12 release in the settlement agreement is so broad that it exceeds the scope
13 of what the estate is permitted to release. *See Motion*, dkt. 184, pp.
14 9:27-10:2 (citing *inter alia* Cal. Ins. Code section 650 "The rescission
15 shall apply to all insured under the contract, including additional
16 insureds, unless the contract provides otherwise . . .").
17

18 The tentative ruling did not require any appearances at the hearing, and, while
19 Mr. Barrett's counsel came to Court at 1:00 p.m. on January 23, 2018 ~~for the by then~~
20 ~~discontinued hearing, Mr. Barrett this court limited the hearing to a consideration of~~
~~whether Mr. Barrett had established a sufficient question as to the merits to warrant~~
~~continuing the matter, in accordance with the posted procedures of the undersigned~~
~~when a party opposing a tentative ruling has had~~ not requested a hearing and notified
the other Parties as required by the Court's procedures.

21 This Court having considered the Motion, the related pleadings filed by Joseph
22 M. Barrett (dkt. 192), Premium Assignment Corporation II (dkt. 195, 196, 208),
23 Evanston Insurance Company (dkt. 196, 208, 113), Daniel Tontini (Dkt. 212), the
24 Trustee's Reply (dkt. 208), the materials submitted in connection with the informal
25 conference on the discovery dispute, the arguments, representations, and statements of
26 counsel for Mr. Barrett on the record; and based on this Court's finding and reasons
27 set forth in the tentative ruling, which this Court adopted as its final ruling, and on the
28 record at the hearing, it is HEREBY ORDERED THAT:

1. Mr. Barrett was not entitled to the discovery he seeks, for the reasons
stated in the adopted tentative ruling attached hereto as Exhibit A, based on which
this Court was persuaded that Mr. Barrett has not established (a) that his requested
discovery was relevant or, alternatively, (b) that it is warranted under the relevant
factors (*see* Fed. R. Civ. P. 26, especially (b)(1) & (c)(1), incorporated by Fed. R.
Bankr. P. 7026 and 9014(c)). For those reasons this Court was persuaded to grant ~~as it~~
~~had no bearing on~~ the Trustee's Motion, which the Court granted in its January 25,
2018 Order (Dkt. 215); and

2. Evanston's Motion for Protective Order is denied as moot.

###

Date: February 7, 2018

Neil W. Bason
Neil W. Bason
United States Bankruptcy Judge

EXHIBIT A

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Neil Bason, Presiding
Courtroom 1545 Calendar**

Tuesday, January 23, 2018

Hearing Room 1545

1:00 PM

2:17-19548 Layfield & Barrett, APC

Chapter 11

- #1.00** Cont'd hrg re: Motion For Order Approving Settlement
With Evanston Insurance Company
fr. 1/11/18

Docket 184

Tentative Ruling:

Grant, subject to holding the proceeds for future division between the bankruptcy estate and Premium Assignment Corporation II ("Premium") as set forth in the Chapter 11 Trustee's reply (dkt. 207). Appearances are not required.

Proposed order: Movant is directed to lodge a proposed order via LOU within 7 days after the hearing date, and attach a copy of this tentative ruling, thereby incorporating it as this court's final ruling. See LBR 9021-1(b)(1)(B).

Key documents reviewed (in addition to motion papers): Mr. Barrett's Opposition (dkt. 192); Premium's Opposition papers (dkt. 195, 196); Mr. Barrett's Brief re Informal Discovery Conference (dkt. 199); the brief of Evanston Insurance Company ("Evanston") re same (in support of protective order to preclude deposition) (dkt. 200); Evanston's Statement of Non-Opposition (dkt. 198); Evanston Replies (dkt. 205, 206); and the Chapter 11 Trustee's Reply (dkt. 207).

Reasons: The tentative ruling is that, in addition to the reasons stated in the motion (dkt. 184) and the reply briefs filed by the Trustee (dkt. 207) and Evanston (dkt. 206), Mr. Barrett has not established that (a) the expense to the bankruptcy estate of the proposed discovery (let alone any expense that Evanston could charge against any premium refund) would be justified by (b) the apparently remote or perhaps non-existent possibility of discovering facts that would support Mr. Barrett's legal theories, nor has he established that the language of the proposed release in the settlement agreement is so broad that it exceeds the scope of what the estate is permitted to release. See Motion, dkt. 184, pp. 9:27-10:2 (citing *inter alia* Cal. Ins. Code section 650 "The recission shall apply to all insured under the contract, including

**United States Bankruptcy Court
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1:00 PM

CONT... Layfield & Barrett, APC

Chapter 11

additional insureds, unless the contract provides otherwise").

If appearances are not required at the start of this tentative ruling but you wish to dispute the tentative ruling, or for further explanation of "appearances required/are not required," please see Judge Bason's Procedures (posted at www.cacb.uscourts.gov) then search for "tentative rulings." If appearances are required, and you fail to appear without adequately resolving this matter by consent, then you may waive your right to be heard on matters that are appropriate for disposition at this hearing.

Party Information

Debtor(s):

Layfield & Barrett, APC

Pro Se

Movant(s):

Richard Pachulski (TR)

Represented By
Malhar S Pagay
James KT Hunter

Trustee(s):

Richard Pachulski (TR)

Represented By
Malhar S Pagay
James KT Hunter